IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4008 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4008 of 1996

MR NL PATEL for Petitioner No. 1

MR IM PANDYA AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/10/2003

ORAL JUDGEMENT

The petitioner was selected as a junior clerk on temporary establishment in R & B Division, Surat, by an

order dated 8th March, 1973. The said order is annexed with the petition at Annexure-A. According to the petitioner, prior to the said appointment he was working as work-charge clerk since 11th February, 1966. Since the petitioner had failed to pass pre-service training examination within the prescribed time, the petitioner was apprehending his termination and therefore he filed the present petition and he has prayed for injunction to the effect that the petitioner may not be dismissed from service on the aforesaid ground of non-passing of pre-service training examination.

This Court (Coram: Miss R.M. Doshit, J.) admitted the petition and also granted interim relief on 25th July, 1996 by restraining the respondent from discharging the petitioner from service on the ground of failure to pass the pre-service training (post training) examination. In the meanwhile the petitioner retired from the service on 30th June, 2000. It is pointed out by the learned advocate Mr Patel that the petitioner has already been given pension and provident fund but the petitioner has not been given the gratuity on the ground that this petition is pending before this Court. The learned counsel for the petitioner has placed on record a copy of the correspondence between the executive engineer and the Director of Pension and Provident Fund. It is submitted that since the petitioner has already been protected and has retired from the service on his reaching the age of superannuation, this petition has become infructuous. Considering the fact that the petitioner is already permitted to retire by way of superannuation and since he has been paid pension and provident fund, Mr Patel has shown desire to make representation to the Executive Engineer (R & B), Division No.2, Surat, as well as to the Director of Pension and Provident Fund for the purpose of release of gratuity. In order to make such representation, the petitioner wants to withdraw this petition because the amount of gratuity is not paid to the petitioner in view of the pendency of this petition. No departmental enquiry is pending against the petitioner. Considering the fact that the petitioner has already retired from service on his reaching the age of superannuation on 30.06.2003, the permission to withdraw the petition is granted. The petitioner is also permitted to make a representation to the Executive Engineer (R & B), Division No.2, Surat, as well as to the Director of Pension and Provident Fund on or before 15th November, 2003 for the purpose of release of gratuity. If any such representation is made, the Director of Pension and Provident Fund and the Executive Engineer (R&B), Division

No.2, Surat, may take appropriate decision within one month thereafter on such representation of the petitioner in connection with release of the gratuity amount of the petitioner in accordance with law. Ultimately, if the decision is against the petitioner, it will be open for the petitioner to challenge the same in accordance with law. Mr Patel submits that by virtue of the interim order passed by this Court, termination order was never passed and he remained in service all through out. The said submission of Mr Patel is also noted in this judgement. The petition is accordingly disposed of as withdrawn. Rule is discharged with no order as costs. Liberty to the petitioner to apply in case of difficulty. Interim relief stands vacated.

(P.B. Majmudar, J.)

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